

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 2, 2016 appellant, then a 56-year-old distribution operation supervisor, filed an occupational disease claim (Form CA-2) alleging that she sustained an ongoing stress-related condition causally related to factors of her federal employment. She related that managers Q.M. and T.C. harassed and verbally abused her, failed to provide her with training, discriminated against her due to her diabetes and high blood pressure, and followed her around talking about her to coworkers. Appellant did not stop work.

The employing establishment, in an August 2, 2016 statement, controverted the claim. It noted that appellant had previously filed a traumatic injury claim for stress occurring on April 18, 2016, to which OWCP assigned OWCP File No. xxxxxx301 and denied on June 10, 2016. Appellant also filed a second emotional condition claim due to an alleged traumatic injury on June 15, 2016. The employing establishment maintained that it had committed no error or abuse and challenged the claim.

By development letter dated August 25, 2016, OWCP requested that appellant submit additional factual and medical information in support of her claim, including a detailed description of the work factors to which she attributed her condition.

Appellant, in a September 21, 2016 statement, disputed witness statements from coworkers.³ She related that S.D. came in late to her unit, took breaks, and argued with her when she tried to make him work. Appellant denied raising her voice to S.D. She maintained that C.S. also did not want to work when in her unit and indicated that she was “challenging his statements.” Appellant related that T.C. followed her everywhere, even in the restroom, and screamed and yelled at her constantly. She denied that T.C. sent her to the hospital and asserted that T.C. wrote an incorrect statement. Appellant submitted a copy of an April 18, 2016 letter she wrote alleging that T.C. refused to provide her with training and followed her around.

On October 21, 2016 D.R., a manager with the employing establishment, related that appellant alleged harassment but was not following instructions. She claimed stress when D.R. needed “to discipline her.” D.R. related that appellant’s job was not stressful and that she “believes she should have more staffing than is actually needed.” Sometimes she did not finish her work if there was a large volume of mail. D.R. indicated that appellant had received “letters of warning, and I believe a removal, for her conduct. She did threaten an employee, she does not follow instructions, and she interferes with decisions her [manager] makes.”

By decision dated January 3, 2017, OWCP denied appellant’s emotional condition claim. It found that she had not established any compensable factors of employment. OWCP noted that it had not received any statements from coworkers as appellant indicated in her September 21, 2016 letter. It found that her allegations were general and unsupported and thus she had not established a factual basis for her claim.

Appellant, in correspondence dated and postmarked February 3, 2017, requested an oral hearing before an OWCP hearing representative. In a decision dated February 23, 2017, OWCP

³ Appellant also submitted medical evidence.

denied her hearing request as it was untimely under section 8124(b). It considered the matter within its discretion and found that the issues could be adequately addressed by her requesting reconsideration from OWCP and submitting evidence establishing that she sustained a work injury in the performance of duty.

On appeal appellant asserts that her request for an oral hearing was timely filed as OWCP did not mail its January 3, 2017 decision to her until January 4, 2017.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁶ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁷ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁸

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁹ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that

⁴ 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ *See William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *See Michael Ewanichak*, 48 ECAB 364 (1997).

workplace harassment or unfair treatment occurred.¹⁰ The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹¹ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁴

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition due to a series of employment incidents. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Initially, the Board notes that appellant has not attributed her stress-related condition to the performance of her regular or specially assigned duties or to a requirement imposed by her employment. Thus, appellant has not established any compensable employment factors under *Cutler*.¹⁵

With regard to appellant's allegation that T.C., a manager, denied her request for training, the Board notes that matters regarding training constitute administrative or personnel matters, and thus not compensable absent evidence demonstrating error or abuse by the employing

¹⁰ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

¹¹ See *James E. Norris*, 52 ECAB 93 (2000).

¹² *Beverly R. Jones*, 55 ECAB 411 (2004).

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ *Id.*

¹⁵ See *supra* note 4.

establishment under *McEuen*.¹⁶ Appellant has not submitted any evidence supporting her allegation of inadequate training and thus has not established a compensable work factor.¹⁷

Appellant alleged that she was disputing statements made by S.D. and C.S., employees who did not want to work in her unit. She advised that she did not raise her voice when communicating with S.D. Appellant also challenged a statement made by T.C., a manager. The record, however, does not contain witness statements from T.C., S.D., or C.S. Appellant has not specifically described any interactions with these individuals. A claimant must specifically identify the employment factors or incidents alleged to have caused her condition and establish a factual basis for her allegations with probative and reliable evidence.¹⁸

Appellant further generally related that T.C. followed her around and yelled and screamed at her continually. She did not, however, describe any specific instances of verbal abuse or provide any dates that the alleged verbal abuse occurred. While the Board has recognized that verbal abuse, when sufficiently detailed by the claimant and supported by evidence may constitute a compensable employment factor, appellant has identified no specific instances of verbal abuse or provided any evidence to support her allegation.¹⁹ As she has not submitted evidence supporting her claim of verbal abuse, appellant has not established a compensable work factor.²⁰

Appellant contended that Q.M. and T.C. harassed her, followed her around talking about her to coworkers, and discriminated against her due to her physical condition. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.²¹ A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.²² The employing establishment denied that appellant was harassed at work. Appellant did not specifically describe in detail any instances that she believed constituted harassment or submitted any corroborating evidence, and thus she has not alleged or established a compensable work factor.²³

¹⁶ *Supra* note 6. See also *C.B.*, Docket No. 11-1457 (issued February 10, 2012); *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹⁷ *R.H.*, Docket No. 13-1193 (issued May 29, 2014).

¹⁸ See *T.V.*, Docket No. 16-1519 (issued September 12, 2017).

¹⁹ See *A.S.*, Docket No. 15-0028 (issued April 20, 2015); *T.G.*, 58 ECAB 189 (2006).

²⁰ See *G.M.*, Docket No. 14-0841 (issued July 10, 2015).

²¹ *Doretha M. Belnavis*, 57 ECAB 311 (2006).

²² *Robert Breeden*, 57 ECAB 622 (2006).

²³ See *S.A.*, Docket No. 15-1355 (issued November 18, 2015).

As appellant has not established any compensable employment factors under FECA, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.²⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.²⁵ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.²⁶ The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.²⁷ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.²⁸

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.²⁹

ANALYSIS -- ISSUE 2

The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired on February 2, 2017, 30 days after OWCP's January 3, 2017 decision.³⁰ Appellant's hearing request was postmarked on February 3, 2017. Therefore, the Board finds that OWCP properly found in its February 23, 2017 decision that she was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of its January 3, 2017 decision.³¹

²⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).

²⁵ 5 U.S.C. § 8124(b)(1).

²⁶ 20 C.F.R. § 10.615.

²⁷ *Id.* at § 10.616(a).

²⁸ *See Leona B. Jacobs*, 55 ECAB 753 (2004).

²⁹ 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

³⁰ *See T.T.*, Docket No. 15-1397 (issued December 3, 2015).

³¹ 20 C.F.R. § 10.616(a); *see supra* note 29 at Chapter 2.1601.4(a) (October 2011).

OWCP properly exercised its discretion by noting that it had considered the matter and denied appellant's request for a hearing because the issue could equally well be addressed through a request for reconsideration.³² The Board has held that the only limitation on OWCP's authority is reasonableness and an abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.³³ The evidence does not support that OWCP abused its discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for a hearing as untimely under section 8124.³⁴

On appeal appellant maintains that her request for an oral hearing should be considered timely as OWCP did not mail its January 3, 2017 decision until January 4, 2017. Section 8124(b) provides, however that a claimant not satisfied with a decision must make a hearing request within 30 days after the date of the issuance of the decision. OWCP issued its decision on January 3, 2017. Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under any terms other than those specified in the statute.³⁵

CONCLUSION

The Board finds that appellant has not established an emotional condition in the performance of duty. The Board further finds that OWCP properly denied her request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

³² See *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

³³ See *Daniel J. Perea*, 42 ECAB 214 (1990).

³⁴ See *S.G.*, Docket No. 17-0968 (issued September 13, 2017); *R.P.*, Docket No. 16-0554 (issued May 17, 2016).

³⁵ *Danny E. Haley*, 56 ECAB 393 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 23 and January 3, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 29, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board